

District Judge John C. Coughneur

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LANCE P. McDERMOTT,

Plaintiff,

v.

JOHN P. POTTER, Postmaster General, United  
States Postal Service,

Defendant.

Case No. 08-1846 JCC

GOVERNMENT'S RESPONSE TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**Noted for consideration:  
April 27, 2009.**

COMES NOW Defendant John P. Potter ("Government"), by and through his counsel of record and hereby respectfully submits his Response to Plaintiff's Motion for Summary Judgment.<sup>1</sup> Defendant has moved to dismiss Plaintiff's Complaint based on insufficient service of process pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure. *See* Motion to Dismiss, Dkt. No. 11. Defendant asserts that because Plaintiff has not served the Government in the manner and form required by law, the Defendant is not yet a party to this case and is therefore not obligated to respond to the merits of Plaintiff's summary judgment motion. *Id.* Should the Defendant become a party to this action, it is respectfully requested that he be given an opportunity to substantively respond to Plaintiff's summary judgment motion.

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<sup>1</sup> Because Plaintiff has moved the Court for summary judgment and an order of default, Defendant has filed this response, its opposition default and motion to dismiss to preserve its defenses. By filing these pleadings, Defendant neither concedes nor waives any jurisdictional defenses or claims of dismissal based on any other defenses applicable by law.

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3 DATED this 23rd day of March, 2009.  
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5 Respectfully submitted,

6 JEFFREY C. SULLIVAN  
7 United States Attorney

8 /s/ Priscilla T. Chan  
9 PRISCILLA T. CHAN, WSBA No. 28533  
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18 Attorneys for Defendant Potter.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

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I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via USPS mail, postage pre-paid.

Lance McDermott, pro se  
1819 South 104th Street  
Seattle, Washington 98168

DATED this 23rd day of March, 2009.

/s/ Priscilla T. Chan  
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